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STATE FOR NEA/ELA, EBB/BOGER
USTR FOR GROVES AND MOWREY
COMMERCE FOR 4520/ITA/ANESA AND USPTO

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SUBJECT: 2008 Special 301 Review: Egypt

REF: A. CAIRO 201

[1](#)B. STATE 9475

Sensitive but Unclassified, not for Internet distribution.

[1](#)1. (SBU) SUMMARY: Egypt has made incremental progress in the protection of Intellectual Property Rights during the last three years. The GOE has worked with the private sector and USG to improve its system for granting pharmaceutical patents and increase enforcement against copyright pirates, winning praise from some private-sector stakeholders while leaving others discouraged at the pace of progress. Some shortcomings in data protection and copyright enforcement remain. We recommend that USTR move Egypt from the Special 301 Priority Watch List to the Watch List as the best way to press Egypt for further reform.
END SUMMARY.

[1](#)2. (U) Ref A provides our latest assessment of Egypt's progress on action items identified by USTR under the Special 301 Initiative and other issues cited in ref B. Following are additional updates as well as our views of the political and economic context influencing GOE IPR policy and the positions of private-sector stakeholders.

Background

[1](#)3. (SBU) USTR elevated Egypt to the Priority Watch List in 2004 primarily as a result of the Egyptian government's issuance of marketing approval for local manufacturers to produce patent-infringing copies of four U.S. pharmaceutical products. At the time, the Pharmaceutical Research and Manufacturers of America (PhRMA) recommended that Egypt be named a Priority Foreign Country. In 2005, the outgoing Minister of Health and Population authorized another local generic copy of an innovator drug based upon unauthorized reliance on confidential test data.

[1](#)4. (SBU) Although GOE interpretation of the legal framework leaves open the possibility of more approvals based on unauthorized reliance on confidential test data, the current Minister of Health and Population, Hatem El Gabaly, has pledged not to permit this, and in fact we understand that the GOE has not granted marketing approval for unauthorized generic pharmaceuticals since 2005. Meanwhile, in the last three years the GOE has restructured its patent office, worked to clear a backlog of pending patent applications, improved the capacity of judicial and regulatory officials working on IPR issues, and otherwise strengthened its IPR regulatory regime and enforcement.

¶15. (SBU) The GOE has not changed its interpretation of its obligations to protect pharmaceutical test data under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. It continues to hold the position that data exclusivity and the principle of non-reliance are above and beyond GOE TRIPS obligations. USG officials have raised concerns about the GOE interpretation repeatedly in high-level meetings during the last three years, including discussions over the Trade and Investment Framework Agreement (TIFA) and, most recently, the November 2007 meeting between Gabaly and USTR Schwab in Washington. Data protection was expected to be one of the significant points of contention in negotiations over a free trade agreement, which the USG opted not to launch in the spring of 2006.

¶16. (SBU) After the USG retained Egypt on the Priority Watch List in 2007, Gabaly and Minister of Trade and Industry Rachid Rachid wrote the Embassy to protest that we had failed to recognize Egypt's improvements. The GOE and USG increased engagement on IPR this year, including visits by GOE delegations in Washington and visits by USTR and U.S. Patent and Trademark Office (USPTO) officials to Egypt.

Technical Assistance, Capacity Building

¶17. (U) Thanks in part to technical assistance provided by USPTO and USAID, the Egyptian Trademark Office is completing examination of applications in seven months, compared with 12 months previously, even though annual trademark applications have now more than doubled from 7,553 in 2004 to 16,076 in 2007. The GOE has taken advantage of training on topics such as patent and trademark examination, specialized pharmaceutical patent examination, Patent Cooperation Treaty application processing, industrial design examination, trademark examination, and digital age copyright issues, as well as judicial training in IPR law and enforcement.

¶18. (U) The Information Technology Industry Development Agency (ITIDA) reported in the GOE's Special 301 submission that it organized IPR legal training for 463 judges, 618 public prosecutors, and 152 enforcement officers in 2007.

¶19. (SBU) Revisions of Book 4 of the IPR Law covering the protection of new plant varieties are now before the Cabinet for their review. The revisions, drafted by the Ministry of Agriculture, are part of Egypt's efforts to join the International Union for the Protection of New Varieties of Plants (UPOV). The changes originated in an IPR committee led by the Prime Minister that is now considering further improvements to IPR laws.

¶110. (SBU) In addition, the Ministry of Trade and Industry is proposing the revision of 14 laws governing internal trade with the objective of keeping dangerous, counterfeit, and other illegal products out of the market.

¶111. (SBU) In another recent development, a committee to hear appeals of Patent Office decisions has been constituted and was scheduled to meet and hear appeals February 21.

¶112. (SBU) The GOE still appears unable to implement the 120-day streamlined drug registration system in force in January 2007 for drugs carrying a US Food and Drug Administration (FDA) or European Medicines Agency (EMA) approval. Gabaly's senior adviser indicates that they are fully cognizant of this issue and would soon amend the process to speed up the registration period. USAID is financing the training of three or four employees of the Ministry of Health at a USFDA program on drug registration in April in order to help maximize the data protection period. In practice, the period begins at the filing date of drug registration application, and is therefore

minimized by unnecessary delays in the approval process.

Pharmaceutical Industry Views

¶13. (SBU) In its 2008 Special 301 submission, PhRMA recommended that Egypt be removed from the Special 301 report altogether, stating that "Egypt has made significant efforts to improve its protection and enforcement of intellectual property in 2007." PhRMA cited training of judges and patent examiners, modernizing the infrastructure of the Egyptian patent office, and appointment of new personnel in key functions. PhRMA says it expects the GOE to conclude the processing of "mailbox" pharmaceutical patent applications by the beginning of this year.

¶14. (SBU) In a briefing at the Embassy, a PhRMA representative visiting from Washington praised the efforts of Gabaly to improve Egypt's IPR regime. The PhRMA representative cautioned that Gabaly, who faces significant domestic pressure from Egyptian pharmaceutical producers and consumers, would disengage on IPR and relax IPR protection in Egypt if the USG and private-sector stakeholders failed to acknowledge Egyptian improvements in IPR protection. He asked that the USG "not get ahead of industry" on the issue.

Copyright Industry and Enforcement

¶15. (U) The International Intellectual Property Alliance (IIPA) recommended in its 2008 Special 301 submission that Egypt remain on the Priority Watch List, citing a lack of enthusiasm for "taking the steps necessary to eliminate piracy and foster legitimate growth of the copyright industries." The IIPA noted climbing levels of music piracy and called for more vigorous enforcement against pirated entertainment software led by ITIDA. However, the IIPA report also notes steadily decreasing business software piracy rates in the Egyptian market from 69% in 2003 to 60% in 2007.

¶16. (SBU) The IIPA submission alluded to the case of the US game manufacturer EA, noting that the Egyptian company that pirated EA software continues to sell its products and that the Ministry of Culture has been reluctant to state that there is no legitimate basis for the Ministry's license to the pirate company. Ministry officials have told us the license expired in summer 2007 and have given us their assurances that it will not be renewed, although the issue remains under review by the GOE.

¶17. (U) IIPA also noted that the Business Software Alliance (BSA) is satisfied with ITIDA activities. ITIDA stated in its 301 submission that its IPR office assisted in the adjudication of 372 IPR cases through submission of expert reports to the courts and prosecutors in 2007. However, BSA noted concern over lingering uncertainty about enforcement authority. The association argues that ITIDA should have enforcement authority, to the exclusion of the Ministry of Culture.

¶18. (SBU) Microsoft Egypt described its relations with Egyptian enforcement authorities as "fruitful and long-term" in a draft 301 submission (ref B). Microsoft estimated that the GOE conducts 150 raids a month against software pirates.

¶19. (SBU) Egypt has not acceded to the WIPO internet treaties; however we understand that Egyptian IPR law and copyright provisions are largely consistent with the protections provided by the treaties. The GOE made this argument as well in its Special 301 submission.

¶20. (SBU) SUMMARY: We face significant challenges in improving IPR protection in Egypt. At the same time, we

agree with the judgments of PhRMA and Microsoft - the private-sector stakeholders who are working most actively to improve IPR in Egypt - that the IPR regime here has improved steadily, if slowly, during the last three years. The Priority Watch List has served to focus our engagement with the GOE during that time. From our perspective, the issue before us is how to use Section 301, as Congress intended, to influence the GOE to accomplish more on IPR reforms. We judge that the GOE would interpret as punitive a decision to keep Egypt on the Priority Watch List another year, and IPR protection in Egypt would suffer as a result.

JONES